

FIRST REGULAR SESSION

SENATE BILL NO. 366

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHEELER.

Read 1st time February 16, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1619S.02I

AN ACT

To repeal section 194.119, RSMo, and to enact in lieu thereof one new section relating to designation of next-of-kin for deceased persons.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 194.119, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 194.119, to read as follows:

194.119. 1. As used in this section, the [term] **following terms shall mean:**

(1) "Right of sepulcher" [means], the right to choose and control the burial, cremation, or other final disposition of a dead human body;

(2) "Custody", "control", "disposition", "final disposition", and "right of sepulcher", as applied to deceased human remains or to a dead human body shall mean only custody, control, or disposition of deceased human remains or a dead human body after gifts, if any, of all or any part of the deceased's body are made under sections 194.210 to 194.230.

2. For purposes of this chapter [and], chapters 193[, 333], and 436, RSMo, and section 333.121, RSMo, and in all cases relating to the custody, control, and disposition of deceased human remains, including the common law right of sepulcher, where not otherwise defined, the term "next-of-kin" means the following persons in the priority listed if such person is eighteen years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition, and complied with the provisions of subsection 3 of this section:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(1) Any person designated by the deceased to act as next-of-kin. The designation shall be made in any of the following manners, and if there is more than one person designated in a document, then the order in which the persons are listed in said document shall establish the priority of the persons so designated:

(a) Any person designated pursuant to a prepaid funeral plan; or

(b) Any person designated in a written instrument that is signed and dated and witnessed or notarized by a person who is not designated in the instrument.

Where the deceased has executed more than one document containing a designation of next-of-kin, the document that the deceased last executed shall be the document that controls the designation of next-of-kin;

(2) The surviving spouse;

[(2)] (3) Any surviving child of the deceased. If a surviving child is less than eighteen years of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place of the child unless such child's legal or natural guardian was subject to an action in dissolution from the deceased. In such event the person or persons who may serve as next-of-kin shall serve in the order provided in subdivisions [(3)] (4) to (8) of this subsection;

[(3)] (4) (a) Any surviving parent of the deceased; or

(b) If the deceased is a minor, a surviving parent who has custody of the minor; or

(c) If the deceased is a minor and the deceased's parents have joint legal custody, the parent whose residence is the minor child's residence for purposes of mailing and education;

[(4)] (5) Any surviving sibling of the deceased;

[(5) Any person designated by the deceased to act as next-of-kin pursuant to a valid designation of right of sepulcher as provided in subsection 8 of this section;]

(6) The next nearest surviving relative of the deceased by consanguinity or affinity;

(7) Any person or friend who assumes financial responsibility for the disposition of the deceased's remains if no next-of-kin assumes such responsibility;

(8) The county coroner or medical examiner[; provided however that such assumption of responsibility shall not make the coroner, medical examiner, the county, or the state financially responsible for the cost of disposition].

3. The next-of-kin of the deceased shall be entitled to control the final disposition of the remains of any dead human being consistent with all applicable laws, including all applicable health codes; **provided that prior to being allowed the right of sepulcher with regard to a deceased's body:**

(1) **If the deceased has a prepaid plan as to final disposition, said person shall agree to carry out said prepaid plan as to final disposition; or**

(2) **If the deceased does not have a prepaid plan, said person shall agree to carry out any instructions of the deceased as to the final disposition of said deceased's body that are contained in a written instrument that is signed and dated and witnessed, to the extent that sufficient assets exist in the probate or trust estate of the deceased to carry out the deceased's instructions as to final disposition and to the extent that such instructions are consistent with all applicable laws, including all applicable health codes. Such instructions may be contained in an instrument that appears to be a duly executed will or trust.**

4. A funeral director or establishment is entitled to rely on and act according to the lawful instructions of any person claiming to be the next-of-kin of the deceased[; provided however,] **and the written statement made by said person under subsection 5 of this section, and** in any civil cause of action against a funeral director or establishment licensed pursuant to this chapter for actions taken regarding the funeral arrangements for a deceased person in the director's or establishment's care, the [relative fault, if any, of such funeral director or establishment may be reduced if such actions are taken in reliance upon a person's claim to be the deceased person's next-of-kin] **funeral director or establishment shall not be liable unless said director or establishment had actual knowledge that a person's claim to be the deceased person's next-of-kin was false or had information that would cause a reasonable person to believe that said claim was false.**

5. Any person who desires to exercise the right of sepulcher [and who has knowledge of an individual or individuals with a superior right to control disposition shall notify such individual or individuals prior to making final

arrangements] shall state in writing, under penalties of perjury, to the best knowledge, information, and belief of said person, whether or not the deceased had executed a designation of next-of-kin under subdivision (1) of subsection 2 of this section. If no designation of next-of-kin was executed by the deceased, any person desiring to exercise the right of sepulcher shall state in writing the name and relationship to the deceased of each individual who has a superior or equal right to control disposition and that he or she has notified or made reasonable attempts to notify each such individual prior to making funeral arrangements.

6. [If an individual with a superior claim is personally served with written notice from a person with an inferior claim that such person desires to exercise the right of sepulcher and the individual so served does not object within forty-eight hours of receipt, such individual shall be deemed to have waived such right. An individual with a superior right may also waive such right at any time if such waiver is in writing and dated.

7.] If there is more than one person in a class who are equal in priority and the funeral director has no knowledge of any objection by other members of such class, the funeral director or establishment shall be entitled to rely on and act according to the instructions of the first such person in the class to make arrangements; provided that such person assumes responsibility for the costs of disposition and no other person in such class provides written notice of his or her objection.

[8. Any person may designate an individual to be his or her closest next-of-kin, regardless of blood or marital relationship, by means of a written instrument that is signed, dated, and verified. Such designation of right of sepulcher shall be witnessed by two persons, and shall contain the names and last known address of each person entitled to be next-of-kin but for the execution of the designation of right of sepulcher and who are higher in priority than the person so designated.]

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